IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 131 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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AMBABEN NARANDAS - Appellant(s)
Versus
BHAICHAND RAVAJI THAKORE DELETED. & 2 - Defendant(s)

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Appearance :
MS ARCHANA ACHARYA for Appellant(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5, 1.2.6,1.2.7
DELETED for Defendant(s) : 1,
MR SHANTILAL S SHAH for Defendant(s) : 2,
MS AVANI S MEHTA for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 25/07/2006

ORAL JUDGMENT

1. This appeal is directed against the judgement and award dated 1.11.1985 passed by the Chairman, Motor Accident Claims Tribunal (Main), Banaskantha District, Palanpur, in M.A.C.P No. 61 of 1983 whereby Tribunal directed original opponents to pay compensation sum of Rs. 25,650/- to the appellant.

2. The short facts of the case are that on 28.09.1982 the applicant was going on the cycle of

one Prabhulal Maganlal and was a pillion-rider on the cycle at about 1.30 p.m. One truck bearing registration No. GTG- 1575 driven by opponent No. 1 came from the opposite side on a wrong side and knowcked down the cyclist as a result of which, the cycle driver Prabhulal was injured and the applicant was crushed below the wheels. As a result of this his leg was fractured, and he had to remain in the hospital from 28.09.1982 to 29.10.1982 in Palanpur as indoor patient. He had again to remain in hospital from 8.4.1983 to 3.8.1983. Therefore he claimed Rs. 60,000/- as compensation.

3. Learned advocate for the appellant has submitted that Tribunal has erred in holding the cyclist contributory negligent purely on surmises and unwarranted on any material on record. He further submitted that Tribunal has erred in not considering the duty cast on the truck driver on a public street having single road at the time of mid-day, seeing a cyclist coming on the opposite side to slow down the speed of his truck and allow passage to the cyclist to pass away safely.

4. As result of hearing and perusal of record, it is found that the Tribunal has come to the conclusion that looking to the fact of the panchnama, both the sides were negligent in driving their vehicles. The incident happened in broad day light. The road was straight. Each vehicle was coming from the opposite direction. The cyclist is equally responsible. He cannot throw the entire blame on the truck-driver as he was having a pillion rider and the truck had moved at distance of 57 ft, after the accident which shows that he was in sufficient speed and could not control the vehicle in advance to prevent the accident. Thus, both the sides are negligent for this accident. However, looking to the vehicles and other circumstances the contributory negligence of the cyclist should be 20%.

6. The Tribunal has rightly awarded Rs. 51,300/- for compensation under the different heads. Since the contributory negligence of the cyclist is 20% he shall be entitled for more 30%. Hence, I am of the opinion that the contributory negligence of the

cyclist is 20% therefore the claimant shall be entitled to additional amount of ***Rs. 15,390/-*** with running 6 percent interest from the date of application. Order accordingly. The award of the Tribunal is modified to the aforesaid extent.

7. In the premises aforesaid the appeal is allowed to the aforesaid extent. No order as to costs.

(K.S.JHAVERI, J.)

Suresh*